



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Honourable Minister Barbara Creecy

Minister of Environment, Forestry and Fisheries

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3 April 2020

Dear Minister Creecy

REQUEST FOR REASONS FOR THE AMENDMENT OF SUBCATEGORY 1.1: SOLID FUEL COMBUSTION INSTALLATIONS IN THE LISTED ACTIVITIES AND ASSOCIATED MINIMUM EMISSION STANDARDS

1. We address you on behalf of our clients, groundWork¹ and Earthlife Africa NPC.² We have a particular interest and expertise in issues of air pollution, the protection of human rights, and the implementation and enforcement of the minimum emission standards (MES) in South Africa.
2. We refer to the amended Listed Activities³ published under Government Notice No. 421, Gazette No. 43174, on 27 March 2020, which weakens the new plant MES for sulphur dioxide (SO₂) for existing solid-fuel combustion installations.⁴ We also note the content of the media statement issued by the Department of Environment,

¹ groundWork is a non-profit environmental justice campaigning organisation working primarily in South Africa, in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste. See more information at: www.groundwork.org.za.

² Earthlife Africa is a non-profit organisation, founded in Johannesburg, South Africa, in 1988, that seeks a better life for all people without exploiting other people or degrading their environment. See more information at: <http://earthlife.org.za/>.

³ The list of activities which result in atmospheric emissions, which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, published under Government Notice No. 893, GG No. 37054 on 22 November 2013, and amended by Government Notice No. 551 published in GG No. 38863 of 12 June 2015, Government Notice No. 1207, published in GG No. 42013 of 31 October 2018 and Government Notice No. 687, published in GG No. 42472 of 22 May 2019.

⁴ The proposed amendment was initially published for comment in Government Notice 687 in Government Gazette No 42472 on 22 May 2019.

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Forestry and Fisheries (the “Department”), on the same date, titled “*Cabinet approves amendment of sulphur dioxide minimum emission standards for coal combustion installations – mainly power generation existing plants*”. Copies of both the amendment and the media statement are attached marked as “**Annexure A**”.

3. The effect of this amendment is, from 1 April 2020 (or such later date as already granted by the National Air Quality Officer), to double the permissible SO₂ limit from 500mg/Nm³ to 1000mg/Nm³ for existing solid-fuel combustion plants, benefitting all of Eskom’s coal-fired stations and Sasol’s coal-fired boilers; in particular, despite their reputation as “*the major emitters of sulphur dioxide [SO₂]*”. We again request a complete list of solid fuel combustion installations that would be impacted by this amendment.
4. We reiterate the evidence-based written objections to this **regressive amendment** to the Listed Activities, submitted in July 2019 by the Life After Coal Campaign. We presume that these objections are included in the “*13 submissions representing divergent viewpoints*”. Our clients maintain that, given the crucial purpose and Constitutional import of the MES, this decision to weaken the SO₂ MES limit cannot be justified in any circumstances – including the considerations set out in the Departments’ media statement – and this amendment is unconstitutional, unlawful and invalid.
5. In terms of section 5(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), we hereby **request written reasons for this decision to weaken the new plant SO₂ MES limit** for existing sub-category 1.1 facilities. Given the public importance of the MES – which exist to respect and protect several guaranteed constitutional rights, including section 24(a) of the Constitution of the Republic of South Africa, 1996 – we request that such reasons be provided as soon as possible, and by no later than **4 May 2020**.
6. Our clients request the written **reasons for this amendment decision in its totality**. We specifically request that the reasons deal with, but are not limited to, the following references in the Departments’ media statement:
 - 6.1 The specific “*facilities built before 2010 that will not be decommissioned by 2030*”?
 - 6.2 The data and/or research that supports this statement – “*the revised limit of 1000mg/Nm³ will achieve a 58% reduction in total emissions. It will significantly improve compliance compared to the current state of air, in which sulphur dioxide emissions are measured at 3500/Nm and above*”.
 - 6.3 Details of the “*Technical and Cost Benefit Analysis undertaken by independent scientists including departmental specialists*”, including copies of any reports produced and the names of the independent scientists.
7. We await your response by no later than **4 May 2020**.
8. Our clients’ rights are fully reserved.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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